IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

L.P.A. No.859 of 1992

Date of Decision: 18 - 10 - 2007

Union of India **.....Appellant**

through Mr.Gurpreet Singh, Addl. Central Govt. Standing Counsel

v.

M/S Kaushal Steel Rolling Mills **.....Respondent**

through Mr.Harbhagwan Singh, Senior Advocate with Mr.Vikrant Duggal, Advocate

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

From the impugned order passed by the Customs and Gold (Control) Appellate Tribunal, New Delhi, the issue which was brought by the respondent to this Court was with regard to the classification i.e. whether the offended goods fall in the category of bar or flats. It was not for refund as contended by learned counsel for the respondent.

Learned counsel for the appellant relying upon a decision of the Supreme Court in **Union of India and others v. Jain Spinners Limited and another**, (1992)4 SCC 389 has contended that case of the respondent is squarely

covered by the ratio of the said decision. He relied upon paras 17 and 31 of the aforesaid judgment which read as under:-

> "17. On the next day, i.e., on September 20, 1991 the Central Excises and Custom Laws (Amendment) Act, 1991 came into operation making the amended provisions of Section 11-B applicable with retrospective effect to all pending applications for refund of duty. The amended Section 11-B inter alia provides that when application for refund of any duty of excise is made the Assistant Collector of Central Excise would satisfy himself that the claimant had not passed on the incidence of the duty to any other person. This obligation is cast on the Assistant Collector even in respect of applications made before the commencement of the said amended provisions. The amended provisions further apply notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the appellate Tribunal or any court or in any other provisions of the said act or the rules made thereunder or any other law for the time being in force. The appellant-Union of India, therefore, took the stand that whether it was the High Court's order of February 19, 1986 or of September 19, 1991 (which was passed prior to the coming into operation of the amended provisions on September 20, 1991 and obviously without taking cognizance of them), it was the duty of the Assistant Collector to satisfy himself that no part of the duty in respect of which the refund was claimed, was recovered by the respondents from any other person, before making any order of refund.
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> 31. The present case has made it necessary to send a word of

> caution to the courts that when in rare cases it becomes necessary to pass interlocutory orders injuncting the statutory authorities from recovering the duty, they should keep in mind the amended provisions of the Act and provide adequate safeguards in the order itself for adjudication of the question whether the assessee has passed on the burden of duty to others, and prevent withdrawal or refund of the amount in case the assessee fails to prove before the proper authority that he has not passed on the burden to others. If the authority after proper adjudication in that behalf comes to the conclusion that the assessee has failed to discharge the burden, the courts, where they have earlier injuncted the authorities from recovering the duty, instead of directing the amount to be paid to the assessee, should direct it to be credited to the fund created for the purpose, under the Act. Such direction will avoid further unnecessary controversy and litigation, although in *stricto jure,* it may not be necessary to do so. Even without such safeguards, the courts will be bound to follow the amended provisions of the law, and would be unable to order withdrawal or refund of the duty to the assessee unless the assessee discharges the burden cast on him by the statute. In the present case the High Court completely ignored the provisions of the statute and hence the note of caution."

Therefore, applying the ratio of **Jain Spinners Limited's case (supra)**, we allow the appeal in terms of the orders passed by the Supreme Court.

(VIJENDER JAIN)
CHIEF JUSTICE

(MAHESH GROVER)
JUDGE

October 18, 2007.

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